

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Conor O'Shea	Team: Squad #05	CCRB Case #: 202003632	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 05/28/2020 4:18 PM, Thursday, 05/28/2020 5:11 PM	Location of Incident: Union Square Park	18 Mo. SOL 5/4/2022	Precinct: 13		
Date/Time CV Reported Thu, 05/28/2020 6:45 PM	CV Reported At: Precinct	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/28/2020 8:09 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. DTS Craig Jacob	05974	935049	SRG 1
3. POM Yuriy Demchenko	04740	946912	SRG 3
4. CPT John Oconnell	00000	937204	109 PCT
5. LT James Lee	00000	930421	009 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Brian Verkay	02358	935930	SRG 1
2. POF Paula Martorella	11978	940455	SRG 2
3. SGT Elias Vazquez	03818	949762	SRG 2
4. POM Jose Abreu	30912	941311	SRG 2
5. POM Christophe Havlik	14920	955976	SRG 1
6. POM Peter Kim	21208	951872	SRG 2
7. POM Michael Davi	30875	940053	SRG 1
8. LT Adam Mellusi	00000	931825	SRG 2
9. POM Asar Rhymer	19679	959131	SRG 3
10. POM Joseph Curley	28295	928138	SRG 1
11. POM Ruben Tengco	02476	931313	SRG 2
12. POM Erick Larios	12939	935159	SRG 1
13. POM David Johnson	10132	956776	SRG 2
14. POF Rachel Ayala	29076	941377	SRG 2
15. POM Renato Altamirano	09202	960157	SRG 1
16. POM Alberto Saavedra	11954	954308	SRG 2
17. POM Anibal Vasquez	28771	955624	SRG 2
18. INS Gerard Dowling	00000	915640	SRG
19. INS Brian McGinn	00000	910284	PBMS
20. LSA Daniel Gallagher	00000	922389	LEG BUR
21. POM Angel Vazquez	29633	951374	SRG 3
22. DI Andrew Hillery	00000	925457	SRG 1

Witness Officer(s)	Shield No	Tax No	Cmd Name
23. POM Steven Chimienti	00155	939999	SRG 4
24. AC Stephen Hughes	00000	874365	PBMS
25. DC John Dadamo	00000	913627	SRG
26. DI Steven Hellman	00000	906437	013 PCT
27. CPT Ronald Ramos	00000	935562	SRG 4
28. SGT Richard Guerrieri	01567	948039	SRG 5
29. SGT Joshua Gregory	01456	949062	SRG 3
30. POM Anthony Smith	23039	953418	006 PCT
31. INS Michele Irizarry	00000	915113	TRN BUR

Officer(s)	Allegation	Investigator Recommendation
A . POM Yuriy Demchenko	Force: Police Officer Yuriy Demchenko struck § 87(2)(b) with a police bicycle.	
B . POM Yuriy Demchenko	Force: Police Officer Yuriy Demchenko struck individuals with a police bicycle.	
C . CPT John Oconnell	Force: Captain John O'Connell struck § 87(2)(b) with a police bicycle.	
D . DTS Craig Jacob	Force: Detective Craig Jacob struck individuals with a police bicycle.	
E . DTS Craig Jacob	Discourtesy: Detective Craig Jacob spoke discourteously to individuals.	
F . An officer	Force: An officer used physical force against individuals.	
G . An officer	Force: An officer used physical force against § 87(2)(b)	
H . LT James Lee	Force: Lieutenant James Lee struck individuals with a police moped scooter.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On May 28, 2020, § 87(2)(b) called the Transit District 4 stationhouse and filed a complaint with Sergeant Rachid Lora on behalf of herself and unidentified individuals. Sgt. Lora called the CCRB that same day and faxed details of § 87(2)(b) complaint to the CCRB the next day. On June 3, 2020, § 87(2)(b) filed a complaint on the CCRB website on behalf of herself and unidentified individuals. On June 4, 2020, § 87(2)(b) filed a complaint on the CCRB website as a reporting non-witness on behalf of § 87(2)(b) and unidentified individuals, based on a viral video he saw on Twitter.

On the afternoon of May 28, 2020, § 87(2)(b) and several dozen other civilians attended a Black Lives Matter protest at Union Square Park in Manhattan. By 4 p.m., § 87(2)(b) and other protesters lined up on the southeast corner of the park, at East 14th Street and Union Square East, where protesters gave speeches. Soon after, NYPD bicycle officers including Police Officer Yuriy Demchenko (of SRG 3) and Detective Craig Jacob (of SRG 1) lined up facing them. At 4:18 p.m., some protesters briefly stepped into the bicycle lane of the street. PO Demchenko began repeatedly pushing § 87(2)(b) and unidentified protesters with his police bicycle (**Allegations A–B: Force**, § 87(2)(g)). Captain John O’Connell of the 9th Precinct assisted PO Demchenko in pushing § 87(2)(b) with PO Demchenko’s bicycle (**Allegation C: Force**, § 87(2)(g)). Det. Jacob also pushed unidentified individuals with his bicycle (**Allegation D: Force**, § 87(2)(g)). Det. Jacob used the word “fuck” in ordering individuals to get back (**Allegation E: Discourtesy**, § 87(2)(g)).

Almost an hour later, an officer allegedly pushed unidentified individuals and allegedly punched § 87(2)(b) in the stomach (**Allegation F–G: Force**, § 87(2)(g)). Sometime later, Lieutenant James Lee of the 9th Precinct was riding a moped scooter and allegedly drove his moped into multiple unidentified protesters, knocking at least one person to the ground (**Allegation H: Force**, § 87(2)(g)). § 87(2)(g), § 87(4-b)

§ 87(2)(b) and § 87(2)(b) were not arrested or issued any summonses during this incident. The investigation was unable to identify the other victims in this case and was therefore unable to ascertain whether they were arrested or issued any summonses.

The investigation obtained a viral Twitter video recorded by an unidentified individual (**Board Review 01**, summarized at **Board Review 02**), a dramatized and slow-motion version of the same video published by the § 87(2)(b) (**Board Review 03**), BWC footage (relevant footage available at **Board Review 04–26**, summarized at **Board Review 27–42**), and ARGUS overhead surveillance footage from the park’s perimeter (**Board Review 43–46**, all summarized at **Board Review 47**).

The CCRB marked this case as sensitive on July 15, 2020, following the § 87(2)(b) coverage of this incident (**Board Review 48**). This incident later received additional media coverage in an October 2020 article by § 87(2)(b) about SRG’s use-of-force tactics (**Board Review 49**). On January 14, 2021, the New York State Attorney General’s Office filed a lawsuit against the NYPD in the Southern District of New York, § 87(2)(b) alleging a Department-wide pattern of excessive force during the Summer 2020 Black Lives Matter protests, including the use of bicycles against peaceful protesters. § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were not arrested or issued any summonses during this incident. The investigation was unable to identify the other victims in this case and was therefore unable to ascertain whether they were arrested or issued any summonses.

Inefficiencies and inaccuracies by the NYPD Legal Bureau’s BWC Unit delayed the closure of this case, as the BWC Unit repeatedly failed to provide complete and accurate responses to requests for BWC footage. This forced the investigation to send, and await fulfillment of, multiple BWC requests for this case and related cases #202004111 and #202004864 in order to ensure that it received all relevant footage. The COVID-19 global pandemic and issues and delays with remote MOS interviews further delayed the investigation.

Findings and Recommendations

Allegation (A) Force: Police Officer Yuriy Demchenko struck § 87(2)(b) with a police bicycle.

Allegation (B) Force: Police Officer Yuriy Demchenko struck individuals with a police bicycle.

Allegation (C) Force: Captain John O’Connell struck § 87(2)(b) with a police bicycle.

Allegation (D) Force: Detective Craig Jacob struck individuals with a police bicycle.

The following facts are undisputed: SRG bicycle officers lined up on Union Square East, along the southeastern edge of the park, while civilians protested by chanting and holding signs on the curb, facing the officers. Sometime later, at least some protesters stepped off of the sidewalk and into the street—though how many, how far, and in what manner remains in dispute—at which point SRG bicycle officers pushed them back onto the sidewalk with their bicycles. Specifically, PO Demchenko pushed his bicycle into the crowd where § 87(2)(b) was, and Det. Jacob did so immediately next to PO Demchenko. The NYPD made several arrests at this protest, but § 87(2)(b) was not arrested or issued any summonses. § 87(2)(b) and § 87(2)(b) were not on scene for this part of the incident.

This portion of the incident was captured on several angles of video footage, including the viral Twitter video (**Board Review 01**), the § 87(2)(b) version of the same (**Board Review 03**), BWC footage (Det. Jacob’s BWC footage in **Board Review 13**, 00:00 to 01:21; PO Ku BWC footage in **Board Review 16**, 00:00 to 01:03), and NYPD ARGUS footage providing an overhead perspective (**Board Review 43-46**, summarized at **Board Review 47**). In the ARGUS overhead perspective, the time period prior to the use of force is best seen in **Board Review 43** from 00:08:30 to 00:18:15). The time period surrounding the use of force itself is best seen in **Board Review 45** from 00:18:00 to 00:18:45).

In sum, the footage shows that § 87(2)(b) and a few other protesters briefly stepped off of the curb and into the bicycle lane of the street as they looked north toward an unrelated arrest in progress. The protesters did not rush *en masse* into the street, nor did they try to “take over” the street or otherwise breach through the large crowd of officers in the street. The footage also shows that the protesters generally pushed back with their arms against PO Demchenko’s repeated bicycle pushes but did not appear to attempt to take PO Demchenko’s bicycle away from him.

Other BWC videos (Sgt. Verkay’s #1 at **Board Review 04**, PO Abreau’s #1 at **Board Review 11**; PO Anibal Vasquez’s #1 at **Board Review 17**) show that before the officers started pushing their bicycles into the crowd, the NYPD had been playing warnings for pedestrians to not be in the roadway via a Long-Range Acoustic Device (LRAD).

§ 87(2)(b) (**Board Review 51**) testified that the protest was non-violent before the police started the confrontation. § 87(2)(b) described the officers’ actions of pushing bicycles into the crowd as “unprovoked,” and she denied that there was any physically antagonistic behavior from the protesters before the officers began pushing their bicycles into the crowd. One of the bicycles struck § 87(2)(b) in the head. The protesters behind § 87(2)(b) tried to push PO Demchenko’s bicycle off of § 87(2)(b) and away from the other protesters who had fallen to the ground. § 87(2)(b) did not describe herself or the crowd as trying to take over the street or go into the street.

§ 87(2)(b) further recounted that Capt. O’Connell applied additional force by pushing with PO Demchenko’s bicycle. Capt. O’Connell’s additional force pushed § 87(2)(b) up against a waist-high stone jersey barrier. This is depicted in a photograph (**Board Review 55**) § 87(2)(b) obtained from an unidentified protester. The photograph depicts white-shirted Capt. O’Connell pushing PO Demchenko’s bicycle into § 87(2)(b) is in the bottom of the photograph with the pink backpack and blonde hair. This photograph was included in the lawsuit from the Attorney General’s office.

§ 87(2)(b) sustained abrasions to both elbows from falling onto the jersey barrier, a large horizontal bruise on the back of her right arm from shielding herself from PO Demchenko's bicycle frame, and a vertical bruise on the back of her left leg. § 87(2)(b) believed she may have sustained the leg bruise from being pushed against the jersey barrier but was not certain. § 87(2)(b) provided photographs of her injuries, which were consistent with her descriptions (**Board Review 52–54**).

Det. Jacob (**Board Review 56**) testified that he had “extensive” experience working protest details, as he had been a member of SRG since its inception in 2015. PO Demchenko (**Board Review 57**) recounted that he had been assigned to SRG for approximately three to four years before the incident. As part of their SRG training, Det. Jacob and PO Demchenko were both trained on using their police bicycles for crowd control purposes, whereby they pick up the bicycle, push it outwards from their chest, and set it back down—this motion can be repeated as needed. PO Demchenko acknowledged that it would be improper technique, per the training, to push the bicycle from over the officer's head. At least one module in this training was the 3-Day bicycle training course.

PO Demchenko and Det. Jacob both testified that an unidentified white-shirted supervisor—whom neither could identify or describe in detail—ordered the bicycle officers to start pushing with their bicycles during the incident. PO Demchenko and Det. Jacob both interpreted this to be a command to use the bicycle-pushing technique from their SRG bicycle officer training described above.

PO Demchenko acknowledged that the Twitter video depicts him using improper technique for the bicycle-pushing maneuver, because his bicycle was over his head as he was pushing it at civilians. PO Demchenko attributed this to the concrete jersey barriers and bicycle officers on either side of him, which limited his range of motion. PO Demchenko further acknowledged that the Twitter video depicts him continuing to push his bicycle into the crowd even after they had moved back onto the sidewalk. PO Demchenko explained that he was trying to use the minimum force possible to push the protesters away from him, but he lost control of his bicycle and needed to return back to the line of officers as he was out of position. Members of the crowd then tried to take PO Demchenko's bicycle away from him. He had no other reasons for continuing to push the protesters with his bicycle once they were on the sidewalk.

PO Demchenko reviewed his actions from 01:00 to 01:09 in Det. Jacob's first BWC video (**Board Review 13**). The footage depicts PO Demchenko pulling back and then pushing forward into the crowd while bent forward. PO Demchenko explained that he was exhausted from holding his bicycle up and lost control of his bicycle during this time.

Det. Jacob further recounted that at some point, protesters became disorderly insofar as they came off the sidewalk and into the street. Det. Jacob described the protesters as having “charged” at the officers. Although Det. Jacob recounted that a protester hit him in the head during the portion of the incident involving § 87(2)(b) his second BWC video (**Board Review 14**) shows that this actually occurred several minutes later during a similar encounter between the bicycle officers and protesters—but not the interaction that is under investigation in this case.

Capt. O'Connell (**Board Review 58**) did not have a strong independent recollection of the details of the incident, even when presented with photographs depicting the surrounding area and events preceding the incident. Capt. O'Connell explained that the bicycle officers did use their bicycles to “move the crowd” so that they could “hold the line” and not allow the crowd to go farther into the street and past the line of officers. Capt. O'Connell initially denied—before seeing any footage of the incident—that he assisted with pushing a bicycle into the crowd, but later stated that he did use force to keep people out of the street.

Capt. O'Connell identified himself in the Twitter video (**Board Review 01**) as the white-shirted officer who also pushes PO Demchenko's bicycle into the crowd, and also identified himself as the white-shirted officer pushing PO Demchenko's bicycle into § 87(2)(b) in the photograph (**Board Review 55**). Capt. O'Connell explained his actions in the video by saying he was “assisting

the officers [to] hold the line,” and confirmed that he had no other reasons for taking the actions seen in the footage aside from attempting to hold the line. Capt. O’Connell feared that, absent his intervention, the line would be “breached” because the protesters were trying to “penetrate” the line and go into the street. Capt. O’Connell confirmed that the protesters were permitted—indeed, required—to remain on the sidewalk. Capt. O’Connell believed that the Twitter video depicts civilians trying to take PO Demchenko’s bicycle away from him. However, when asked if any protesters put their hands up to protect themselves from PO Demchenko’s bicycle—rather than take it away—Capt. O’Connell claimed that he could not speak for what the protesters were doing.

Contrary to the officers’ testimony, the video footage shows that § 87(2)(b) and the other victims were not part of an uncontrollable crowd relentlessly attempting to “take over” the street or “charge” at the officers. Instead, the footage shows that a few civilians simply took a few steps off the curb and into the bicycle lane of the roadway—ostensibly rubbernecking as they looked up the street at an unrelated arrest. They made no attempt to interfere with that other arrest. They did not attempt to “take over” any part of the street farther into roadway, which the officers had already secured with several dozen officers on scene. The civilians also did not attempt to attack, assault, or otherwise interfere with any of the officers. The footage also most strongly supports the conclusion that the protesters held their arms up in a defensive position to protect themselves from the bicycle pushes, and to the extent they used any physical force in response, it was to push the bicycle away from them to avoid being struck, rather than to “breach” through the line of bicycle officers.

The investigation also did not credit PO Demchenko’s claim that he was not in control of his bicycle when he pulled back and then charged, leaning forward, into the crowd as seen in Det. Jacob’s BWC footage. PO Demchenko clearly displays enough control over the bicycle to pull backwards—apparently to gather momentum—and then push forwards into civilians who are already on the sidewalk.

The NYPD’s Bicycle Training (3 Day) course, which PO Demchenko and Det. Jacob both took, specifically addresses the use of force involving a bicycle. Although “the bicycle may be used as an extension of your gun belt,” including for officers to “to defend or protect themselves against a physical threat,” officers are explicitly trained to “follow the [use of force] procedure as it is outlined in the Patrol Guide Series 221 – Use of Force” (**Board Review 59**, final page).

NYPD Patrol Guide Procedure 221-01 states that, “In all circumstances, any application or use of force must be reasonable under the circumstances.”

§ 87(2)(g)

By PO Demchenko’s own admission, he failed to properly execute the bicycle crowd control technique from his training by pushing the bicycle while it was over his head. Contrary to PO Demchenko’s contention that this was solely due to the crowd’s resistance, the video footage shows that PO Demchenko retained control over his bicycle when deciding to continually reapply force to the crowd after the civilians were back on the sidewalk—especially in the moment when he bent down, reared back, and pushed his bicycle into the crowd at a lower angle. PO Demchenko’s use of the bicycle technique was also inconsistent with his stated purpose of getting the crowd back onto the sidewalk, as he continued using force against members of the crowd even after they had moved back onto the sidewalk. § 87(2)(g)

§ 87(2)(g)

Capt. O’Connell’s justifications for using force were internally inconsistent and contradictory; he alleged that the protesters were simultaneously trying to pull PO Demchenko’s bicycle away from him while also trying to rush forward towards PO

§ 87(2)(g)

It is undisputed that Det. Jacob used the word “fuck” in issuing commands to move or get back during this incident. At least some of these instances are captured in the viral Twitter video (**Board Review 01**).

The NYPD's mission statement, contained in Patrol Guide Procedure 200-02 (Board Review 60), includes "treating every citizen with compassion, courtesy, professionalism, and respect." The NYPD "pledge[s]" in that same Procedure to "respect the dignity of each individual and render our services with courtesy and civility." Patrol Guide Procedure 203-09 states that officers must "interact with members of the public in a professional manner" (**Board Review 61**). However, the NYPD's disciplinary decisions "have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct" NYPD Disciplinary Case No. 76927/04 (2004) (**Board Review 73**).

Allegation G—Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) (Board Review 62) recounted that she arrived at the protest during a time period which likely occurred after the incident involving § 87(2)(b) described above. While § 87(2)(b) stood in the southeastern edge of the park, she saw an unidentified officer shove some unidentified protesters as he walked to the sidewalk. The officer punched § 87(2)(b) in the stomach one time, causing her pain that lasted for a few hours but no other injuries. § 87(2)(b) was not arrested or issued any summonses. § 87(2)(b) did not specify whether the individuals the officer pushed were arrested or issued any summonses.

any summonses, as far as § 87(2)(b) knew. § 87(2)(b) was unable to provide a specific location or time at which this incident occurred. § 87(2)(b) did not provide—and the investigation was unable to obtain—any identifying information or contact information for any of the alleged victims of the moped strike or any other eyewitnesses. It should also be noted that § 87(2)(b) made no mention of civilians being struck by an officer on a moped in her initial complaint to Sgt. Lora of Transit District 4 later that same night.

§ 87(2)(b) claimed to have video footage depicting this officer pushing individuals before he punched her, but she refused to provide the footage to the CCRB. She also refused to ever sign a verification form, meaning that the CCRB would never obtain a sworn statement from her. When the investigation followed up with § 87(2)(b) to try to obtain the video evidence at a later date, she elected to withdraw her portion of this complaint.

The CCRB has not received any other complaints regarding the portions of the protest that § 87(2)(b) alleged as described above. Neither § 87(2)(b) nor any of the officers saw any of the alleged conduct described § 87(2)(b). Despite the investigation obtaining dozens of hours of BWC footage and ARGUS footage from the surrounding area, none of the footage shows the conduct at issue in these allegations. Some of the footage depicts Lt. Lee riding his moped scooter near the protest, but none of it shows him driving into a crowd, striking any protesters, or any protesters complaining of having been struck with such a vehicle. However, the footage does not provide a comprehensive account of all of Lt. Lee's movements or actions during the protest. There was no BWC footage from Lt. Lee provided to the CCRB.

The investigation was unable to investigate § 87(2)(b) allegations absent her participation, a verified statement from any civilian with firsthand knowledge of this portion of the incident, or video footage capturing the incident. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first and only CCRB complaint involving either § 87(2)(b) or § 87(2)(b) (Board Review 64-65).

- § 87(2)(b)

Det. Jacob has been a member of service for 16 years and has been a subject in 9 other CCRB complaints and 15 other allegations, none of which was substantiated. § 87(2)(g)

- PO Demchenko has been a member of service for 12 years and has been a subject in two other CCRB complaints and five other allegations, none of which was substantiated. § 87(2)(g)
 - The NYPD's Special Operations Division Investigations Unit (SOD-IU) conducted a concurrent investigation exclusively into PO Demchenko's use of his bicycle during this incident with § 87(2)(b) (NYPD case file available at **Board Review 67**, summarized at **Board Review 68**). The "overall disposition" of the NYPD's investigation was "partially substantiated." The NYPD closed as unfounded allegations of Level 2 Use of Force and Force-Struck Against Object, because they determined that PO Demchenko did not "strike anyone with a bicycle," that he merely pushed people with the bicycle, and that this did not constitute a Level 2 Use of Force. The NYPD closed as substantiated allegations that PO Demchenko failed to activate his BWC, failed to prepare a TRI report in a timely manner, and failed to note the use of force in his memo book.
- Capt. O'Connell has been a member of service for 15 years and has been named a subject in two other CCRB complaints and two other allegations, neither of which was substantiated. § 87(2)(g)
- Lt. Lee has been a member of service for 19 years and has been named a subject in 12 other CCRB complaints and 29 other allegations, of which five were substantiated:
 - CCRB case #200702497 involved a substantiated property damage allegation against Lt. Lee. The Board recommended Charges, but the NYPD took no disciplinary action.
 - CCRB case #201300702 involved a substantiated vehicle search allegation against Lt. Lee. The Board recommended Command Discipline (unspecified), but the NYPD took no disciplinary action.
 - CCRB case #201607870 involved substantiated allegations stop, premises entered and/or searched, and unjustified arrest. The Board recommended Command Discipline B. The NYPD recommended Formalized Training for the stop and took no other disciplinary action.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of September 30, 2020, the NYC Office of the Comptroller has no record of any Notice of Claim from § 87(2)(b) or § 87(2)(b) regarding this incident (**Board Review 69**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: #05

Investigator:	<u>DG</u> Signature	<u>IM Giansante for Inv. O'Shea</u> Print Title & Name	<u>July 28, 2021</u> Date
Squad Leader:	<u>Daniel Giansante</u> Signature	<u>IM Daniel Giansante</u> Print Title & Name	<u>July 28, 2021</u> Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date